

FCC MAIL SECTION

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Before the
Federal Communication Commission
Washington, D. C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 96-138
Table of Allotments,) RM-8822
FM Broadcast Stations.)
(Shell Knob, Missouri))

NOTICE OF PROPOSED RULE MAKING

Adopted: June 14, 1996

Released: June 21, 1996

Comment Date: August 12, 1996

Reply Comment Date: August 27, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Galen Gilbert ("Gilbert"), proposing the allotment of Channel 249A to Shell Knob, Missouri, as that community's first local broadcast service. Gilbert stated an intention to apply for the channel, if allotted.

2. In support of its request, Gilbert has provided an engineering statement that indicates a channel can be allotted to Shell Knob. According to Gilbert, Shell Knob is an active community with commercial establishments, churches and schools. Gilbert states that Shell Knob has experienced steady growth over the past decade due to its proximity to Table Rock Lake which draws an increasing number of vacationers and tourists annually.

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "...among the several states and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See e.g., Oak Grove, FL, 5 FCC Rcd 3774 (1990); Hannibal, OH, 5 FCC Rcd 3315 (1990); and Statenville, GA, 5 FCC Rcd 2685 (1990). Although Shell Knob is attributed with a population of 60 persons, a post office and zip code by the 1995 edition of the Rand McNally Commercial Atlas, we may find that a population grouping of 60 persons does not constitute a community for allotment purposes where the community may be devoid of the customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social or civic organizations. See

e.g., Searles Valley, CA, 3 FCC Rcd 5221 (1988); see also Naples, FL, 41 RR 2d 1549 (1977). In past cases we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. Therefore, petitioner is requested to present the Commission with specific information to demonstrate that Shell Knob has the social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein.

4. Channel 249A can be allotted to Shell Knob, Missouri, provided there is a site restriction 10.5 kilometers northeast of the community.¹ The site restriction will prevent a short spacing to a construction permit for Channel 252C1, Station KFAY-FM, Bentonville, Arkansas (BPH-930917IB). Although the proposal for Channel 249A at Shell Knob complies with the Commission's spacing requirements, we note that both the community of Shell Knob and the referenced allotment site are located inside the Mark Twain National Forest. Therefore, petitioner is requested to provide information showing that an actual transmitter site is available that provides city grade coverage to Shell Knob.

5. In view of the fact that the proposed allotment would provide a first local service to Shell Knob, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 249A to Shell Knob, Missouri, in the event it is ultimately found to qualify as a community for allotment purposes. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Shell Knob, as follows:

Community	Channel No.	
	Present	Proposed
Shell Knob, Missouri	---	249A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before August 12, 1996, and reply comments on or before August 27, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

¹ The reference coordinates for Channel 249A at Shell Knob are 36-42-51 and 93-34-36.

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8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

MM Docket No. 96-138
RM-8822

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND THE FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and reply comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Sections 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be

filed with the Secretary, Federal Communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center, Room 239, at its headquarters, 1919 M Street, N.W., Washington, D. C.